



CHAIRMAN

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Federal Communications Commission

Washington, D.C.

October 2, 2003

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OCT 10 2003

Federal Communications Commission
Office of the Secretary

The Honorable Mark E. Souder
U.S. House of Representatives
1227 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Souder:

Thank you for your letter of September 8, 2003, regarding the Commission's recent amendment to its rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA"). In your correspondence, you express concern about the Commission's decision requiring written consent before sending advertising faxes.

On September 18, 2002, the Commission released its *Notice of Proposed Rulemaking* ("NPRM") seeking comment on whether it should change its rules that restrict telemarketing calls and unsolicited fax advertisements, and if so, how. Specifically, the NPRM sought comment on the effectiveness of the TCPA's unsolicited facsimile advertisement rules, including the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive advertisements via fax. The Commission received over 6,000 comments from individuals, businesses, and state governments on the TCPA rules.

The record in this proceeding, along with our own enforcement experience, demonstrated that changes in the current rules are warranted, if consumers and businesses are to continue to receive the privacy protections contemplated by the TCPA. As explained in the Commission's *Report and Order* released on July 3, 2003, the record indicated that many consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive. Consumers emphasized that the burden of receiving hundreds of unsolicited faxes was not just limited to the cost of paper and toner, but includes the time spent reading and disposing of faxes, the time the machine is printing an advertisement and is not operational for other purposes, and the intrusiveness of faxes transmitted at inconvenient times, including in the middle of the night.

As we explained in the *Report and Order*, the legislative history of the TCPA indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Therefore, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before transmitting any faxes to them. The amended rules require all entities that wish to transmit advertisements to a facsimile machine to obtain permission from the recipient in writing.

Noted and filed 2
F. C. C. 10/2/03

The Commission's amended facsimile advertising rules initially were scheduled to go into effect on August 25, 2003. However, based on additional comments received since the adoption of the July *Report and Order*, the Commission, on its own motion, determined to delay the effective date of some of the amended facsimile rules, including the elimination of the established business relationship exemption, until January 1, 2005. The comments filed after the release of the *Report and Order* indicate that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. This extension will allow senders of such advertisements additional time to obtain the necessary permission before the new rules become effective. In addition, it will allow the Commission the opportunity to consider any petitions for reconsideration and other filings that may be made on this issue. I am enclosing a copy of the Commission's *Order on Reconsideration*, released on August 18, 2003.

I appreciate your comments. We have placed a copy of your correspondence in the public record for this proceeding. Please do not hesitate to contact me if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael K. Powell', enclosed within a large, loopy oval shape.

Michael K. Powell

Enclosure

MARK E. SOUDER
3RD DISTRICT, INDIANA

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www.house.gov/souder

8 September 2003

The Honorable Michael Powell
Chairman
Federal Communications Commission
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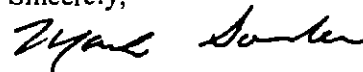
Dear Chairman Powell:

It has recently come to my attention that the Federal Communications Commission (FCC) is formulating new and potentially devastating regulations governing the transmission of unsolicited facsimile advertisements. I believe that the regulations, as they are currently proposed, would be disastrous for small businesses in my district and throughout the United States.

As the regulation is currently drafted, only faxes between entities with an "established business relationship" would be allowed. This would preclude faxes of any sort, even materials requested by telephone, unless the sender has obtained written authorization to send the fax. This onerous burden could potentially add hundreds of hours of additional paperwork to America's already over-regulated small businesses.

I urge you to make a comprehensive review of this proposed regulation prior to the 1 January 2005 implementation. I believe that input from trade associations, chambers of commerce, and businesses affected by the proposed regulation would help the FCC strike a balance between eliminating unwanted faxes and overburdening American businesses.

Sincerely,



Mark E. Souder
Member of Congress

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